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**MAY 04 2004**

In re Application of	:	<b>OFFICE OF PETITIONS</b>
Morrison et al.	:	
Application No. 10/034,827	:	DECISION DISMISSING
Filed: January 3, 2002	:	PETITION
Attorney Docket No. TI-31373	:	

This is a decision on the "PETITION TO CORRECT FILING DATE," filed March 23, 2004, requesting that the above-identified application be accorded a filing date of December 26, 2001, rather than the presently accorded filing date of January 3, 2002.

Petitioner maintains that on December 26, 2001, the application was deposited as "Express Mail" in the U.S. Postal Service. Previous requests for corrected filing receipt were filed on February 27, 2002 and September 23, 2002. In support thereof, applicants have submitted the declaration of Emily Chantry attesting to having placed the application papers in the Express Mail service of the United States Postal Service on December 26, 2001; and a true copy of the application transmittal bearing Express Mail mailing label number EV051432549US.

By letter mailed October 11, 2002, applicants were advised that correction of the filing date of an application based on its date of deposit in the Express Mail service of the USPS was by petition under § 1.10 and required submission of a copy of the Express Mail mailing label. In response, applicants filed the instant petition.

§ 1.10(c) provides that:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the

correspondence prior to the original mailing by "Express Mail;" and

(3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

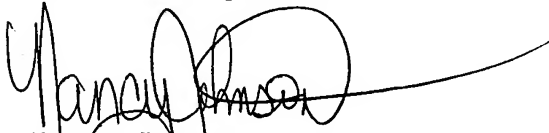
Under the circumstances of this case, the petition is accepted as filed promptly within the meaning of § 1.10(c)(1). The transmittal letter bearing the Express Mail mailing label number itemizes the papers presently accorded a filing date of January 3, 2002. As required by § 1.10(c)(2), petitioner has shown that the "Express Mail" mailing label number "EV051432549US" was placed on the papers prior to the original mailing.

However, the declaration of Emily Chantry is insufficient to show that the application papers were deposited on December 26, 2001, as required by § 1.10(c)(3). Petitioner has not submitted a copy of the relevant "Express Mail" mailing label. Nor is a copy of the record for this mailing label available via the USPTO's USPS Express Mail Information Database. Nor has petitioner provided a copy of any other official notation by the USPS to show the date of deposit. Thus, it is concluded that the requirement for a copy of the Express Mail mailing label is neither met nor waived.

In view thereof, the petition is **DISMISSED**.

The application with a filing date of January 3, 2002 is being examined.

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0309.



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